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SUPREME COURT
THIRD DIVISION

CJC TRADING, INC. and/or MS. CELIA J. CARLOS,
***Petitioners*,**

-versus-

G.R. No. 115884
July 20, 1995

NATIONAL LABOR RELATIONS COMMISSION, RICARDO AUSAN, JR. and ERNESTO ALANAN,
***Respondents*.**
x---x

R E S O L U T I O N

FELICIANO, *J.*:

Private respondents Ricardo Ausan, Jr. and Ernesto Alanan were employed by petitioner since 1983 and 1978, respectively, as truck drivers and were paid on a "per trip or task basis." They filed separate complaints on 23 August 1992 and 15 September 1992, respectively, against petitioner CJC Trading, Incorporated and/or Ms. Celia J. Carlos for illegal dismissal and non-payment of premium pay for holiday and rest day, service incentive leave pay and thirteenth month pay. These cases were consolidated.

On 22 July 1993, a decision was rendered by the Labor Arbiter dismissing the complaints for lack of merit and holding that: (1) respondent Ausan, Jr., after figuring in a non-work related accident which affected his right foot, told petitioner that he no longer wanted to work because his injury might affect his driving; (2) respondent Alanan voluntarily quit his job because of old age and weakness; and (3) private respondents were not entitled to the labor standards benefits claimed by them because they were paid on a "per trip or per task basis."

On appeal, the National Labor Relations Commission ("NLRC") in a decision dated 29 November 1993 affirmed in toto the decision of the Labor Arbiter.

A motion for reconsideration of the NLRC's decision of 29 November 1993 was filed by private respondents praying that:

"x x x

> Invoking justice, fairness and equitable consideration, it is respectfully submitted that this Honorable Commission can easily grant termination pay instead to complainants who have served their master for a considerable period of time and help assuage their financial worries now that they are in the twilight of their lives."[1]

In a minute resolution of 28 February 1994, the NLRC denied the motion for reconsideration but awarded private respondents separation pay equivalent to one-half month salary for every year of service.

Petitioner filed a motion for reconsideration of the NLRC's 28 February 1994 resolution, without success.

Hence, this Petition assailing the award of separation pay to private respondents.

Petitioner contends that the NLRC committed a grave abuse of discretion in rendering the minute resolutions dated 28 February 1994 and 7 April 1994 (which denied its motion for reconsideration).

It argues that because there was no finding that private respondents had been dismissed illegally, they are deemed to have abandoned their jobs and that accordingly, there was no legal basis for the award of separation pay.

Private respondents, on the other hand, claim that there was no grave abuse of discretion on the part of the NLRC in awarding them separation pay and also aver that the NLRC's resolution of 7 April 1994 had already become final and executory on 16 May 1994, and hence there is nothing more for this Court to examine.

Public respondent find support for the grant of separation pay on compassionate justice considering the long years private respondents had served petitioners.

After a careful scrutiny of the Petition, separate comments of public and private respondents and the manifestation and motion to dismiss filed a private respondents, the Court finds merit in petitioner's argument.

The award of separation pay is authorized in the situations dealt with in articles 283 and 284 of the Labor Code,[2] and as well as in cases where there is illegal dismissal and reinstatement is no longer feasible under Section 4(b), Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code.[3]

By way of exception, this Court has allowed grants of separation pay to stand as "a measure of social justice" where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.[4]

The instant case, however, does not fall under any of the above mentioned instances. The facts, as found by the NLRC, show that private respondents had informed petitioner that they intended to quit their jobs and this decision was arrived at by private respondents on their own volition. We find no reason and petitioner has shown none, for departing from the rule that this Court is bound by the findings of fact of the NLRC, there being no showing that the latter had gravely abused their discretion or otherwise acted without or in excess of its jurisdiction.[5] There was no dismissal of private

respondents by petitioner here. Neither, upon the other hand, can this be considered a case of abandonment as petitioner claims because the elements of abandonment are not present. Rather, we have before us a case of voluntary resignation.

An employee who voluntarily resigns is not entitled to separation pay[6] unless otherwise stipulated in an employment contract or collective bargaining agreement, or sanctioned by established employer practice or policy.[7] The Labor Code is devoid of any provision which grants separation pay to employees who voluntarily resign. Neither was there anything in the record that shows that, in the instant case, there is a collective bargaining agreement or any other agreement or established company policy concerning the payment of separation pay to employees who resign.

The Court notes that private respondents, in their motion for reconsideration from the NLRC's 29 November 1993 decision prayed for an award of termination pay. Considering that private respondents were close to the age of sixty (60) at the time they stopped working for petitioner and that they had been in the employ of petitioner for several years, the Court, taking the view most favorable to private respondents, considers that this could be deemed to be in effect a prayer for the grant of retirement benefits.

The pertinent law is Article 287 of the Labor Code, as amended by R.A. No. 7641, which reads:

> "Art. 287 Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.
>
> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an

> employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.
>
> x x x"

The above amended law took effect on 7 January 1993 and was applied by the Court in the case of Oro Enterprises, Inc. vs. National Labor Relations Commission[8] where a sixty-five (65) year old employee filed a claim for retirement pay with her employer in September 1990. A few days later, a complaint was filed with the Office of the Labor Arbiter, which complaint was eventually resolved by the Labor Arbiter with an award of retirement benefits in favor of the employee. During the pendency of the appeal (which involved determination of the issue whether or not the employer-employee relationship between petitioner and private respondent had persisted or whether it had terminated by resignation of the employee) in the NLRC, R.A. No. 7641 took effect. The new statute was used a basis by the NLRC for the grant of retirement benefits to the employee — i.e., service rendered before the effectivity of the statute was taken into account — and the decision of the NLRC was upheld by this Court. We read Oro Enterprises as holding that R.A. No. 7641 may be given effect where (1) the claimant for retirement benefits was still the employee of the employer at the time the statute took effect; and (2) the claimant was in compliance with the requirements for eligibility under the statute for such retirement benefits.

In the instant case, the complaints of private respondents were still being resolved on the labor arbiter level when R.A. No. 7641 took effect. However, it was quite clear, and both the Labor Arbiter and the NLRC so held, that private respondents had ceased to be employees of petitioner, by reason of voluntary resignation, before the statute went into effect. Moreover, it appears that private respondents did not qualify for the benefits of R.A. No. 7641 under the terms of this law itself. The Court notes that when private respondents filed their complaints more than one (1) year after they had been allegedly

illegally dismissed, respondent Ausan, Jr. was fifty-seven (57) years old while respondent Alanan was sixty (60) years old. That would make Ausan, Jr. fifty-five (55) years old and Alanan fifty-eight (58) years old at the time their services with petitioner were ended by their resignation. Since the record does not show any retirement plan or collective bargaining agreement providing for retirement benefits to petitioner's employees, the applicable retirement benefits to petitioner's employees, the applicable retirement age is the optional retirement age of sixty (60) years according to Article 287, which would qualify the retiree to retirement benefits equivalent to one-half (½) month's salary for every year of service. Unfortunately, at the time private respondent stopped working for petitioner, they had not yet reached the age of sixty (60) years.

We stress, however, that there is nothing to prevent petitioners from voluntarily giving private respondents some financial assistance on an ex gratia basis.

Private respondents' averment that the resolution of the NLRC dated 7 April 1994 had already become final and executory before the instant Petition for *Certiorari* was filed, must be disregarded.

The rule is that where the NLRC has gravely abused its discretion, the remedy of the losing party is not appeal within thirty (30) days from receipt of the assailed decision/resolution under Rule 45 of the Rules of Court but *certiorari* under Rule 65 within a reasonable time from receipt of the assailed decision or resolution. A period of three (3) months is considered reasonable. The fact that the assailed decision or resolution becomes final and executory ten (10) calendar days from receipt thereof by the parties does not preclude the adverse party from challenging it by way of an original special civil action for *certiorari* under Rule 65.[9] The instant Petition was filed pursuant to Section 1, Rule 65 of the Rules of Court. The records show that petitioner received the NLRC's Resolution dated 7 April 1994 on 5 May 1994 and the instant Petition was seasonably filed with this Court on 4 July 1994.

ACCORDINGLY, in view of the foregoing, the instant Petition for *Certiorari* is hereby **GRANTED**, and the Resolutions of the National Relations Commission dated 28 February 1994 and 7 April 1994 in

NLRC NCR CA Nos. 005419-93 and 00-8-04652-92 are hereby **SET ASIDE** insofar as the award of separation pay to private respondents is concerned.

Romero, Melo, Vitug and Francisco, *JJ*., concur.

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[1] Motion for Reconsideration, Annex "G" to the Petition for *Certiorari*, Rollo, p. 41.

[2] See Article 283 dealing with: (a) installation of labor-saving devices, (b) redundancy, (c) retrenchment, (d) cessation of employer's business; and Article 284: (e) when the employee is suffering from a disease and his continued employment is prohibited by law or is prejudicial to his health and to the health of his co-employees.

[3] Sec. 4 (b), Rule I, Book VI of the Implementing Rules and Regulations: where reinstatement of the employee to his former position is required but is not possible because the company has closed or ceased operations of his former position no longer exists at the time of reinstatement (for reasons not attributable to the fault of the employer). See, e.g., Villarama vs. National Labor Relations Commission and Golden Donuts, Inc., 236 SCRA 280 (1994); Zenco Sales, Inc. and/or Zenco Footstep vs. National Labor Relations Commission and Anastacio C. Yap, 234 SCRA 689 (1994).

[4] See, e. g., Cathedral School of Technology vs. National Labor Relations Commission, 214 SCRA 551 (1992); Osias Academy vs. Department of Labor and Employment, 172 SCRA 468 (1989); PEPSICO, Inc. vs. National Labor Relations Commission, 177 SCRA 308 (1989); Philippine Long Distance Telephone Co. vs. National Labor Relations Commission, 164 SCRA 671 (1988).

[5] Wyeth Suaco Laboratories, Inc. vs. National Labor Relations Commission, 219 SCRA 356 (1993); Capitol Industrial Construction Groups vs. National Labor Relations Commission, 221 SCRA 469 (1993).

[6] Fernandez vs. Grolier International, Inc. 146 SCRA 269 (1994).

[7] Philippine Overseas Drilling and Oil Development Corporation vs. Ministry of Labor, 146 SCRA 79 (1986).

[8] 238 SCRA 105 (1994).

[9] Caramol vs. National Labor Relations Commission, 225 SCRA 582 (1993).

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